

May 12, 2022

Mr. Michael J. Hsu
Director, Federal Deposit Insurance Corporation and
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, D.C. 20219

Dear Mr. Hsu:

Documents and information obtained by the Committee show you worked with CFPB Director Rohit Chopra and then-FDIC Director Martin Gruenberg to wrest control of the FDIC's agenda from former Chair Jelena McWilliams. The effort appears to have begun in earnest on or around October 13, 2021, when Rohit Chopra was sworn in as Director of the Consumer Financial Protection Bureau and joined the FDIC Board of Directors. Weeks later, on December 9, 2021, Chopra and Gruenberg issued a confusing statement that implied the Board voted to approve a Request for Information and Comment on the bank merger process.¹ Documents show you participated in this invalid vote, but for reasons that are unclear, did not join the statement issued by Chopra and Gruenberg.²

Republicans on the Committee on Financial Services are investigating this matter to understand how and why you and your colleagues on the Board upended the FDIC's 88-year tradition of considering the Chairman's agenda on a collegial basis and independent from the White House's influence. In the course of our investigation, it has become clear that you and certain OCC staff played key roles in the process that ultimately led Chair McWilliams to announce her resignation on December 31, 2021.

With respect to the OCC's role, on April 26, 2022, Chopra appeared before the Senate Banking Committee and testified that both the general counsels and legal advisors at the CFPB and OCC drafted a memorandum to analyze the FDIC Board's bylaws.³ Chopra relied on that memorandum to justify a series of actions at odds with the FDIC's official position that the Chair sets the Board's agenda. Chopra testified that political appointees at the CFPB and OCC "were concerned about the lack of legal justification proffered by the FDIC's general counsel."⁴

The next day, on April 27, 2022, Chopra appeared before the House Committee on Financial Services and advised Committee Republicans "to ask the OCC" whether the OCC general counsel agreed with the memorandum's legal analysis.⁵ In light of Director Chopra's

¹ Joint Statement of Martin J. Gruenberg and Rohit Chopra (Dec. 9, 2021), https://files.consumerfinance.gov/f/documents/cfpb_bank-merger-act-rfi_joint-statement_2021-12.pdf.

² *Id.*

³ *The Consumer Financial Protection Bureau's Semi-Annual Report to Congress: Hearing Before the S. Comm. on Banking*, 117th Cong. (2022) (testimony of Hon. Rohit Chopra, Director, CFPB).

⁴ *Id.*

⁵ *Consumers First: Semiannual Report of the Consumer Financial Protection Bureau: Hearing Before the H. Comm. on Fin. Services*, 117th Cong. (2022) (testimony of Hon. Rohit Chopra, Director, CFPB).

testimony before the House and Senate, and his decision to refer certain questions to the OCC, please produce the records identified in the attached schedule. Please also make OCC Chief Counsel, Benjamin McDonough, available for a transcribed interview with Committee staff to answer questions about this matter.

It is further problematic that your actions against former Chair McWilliams occurred while you maintain the status of Acting Comptroller, a role in which you have served for more than one year. On May 10, 2021, the Secretary of the Treasury appointed you First Deputy Comptroller and acting Comptroller pursuant to 12 U.S.C. § 4, but the statute does not address whether you may exceed the limitations on acting service prescribed in the Vacancies Act. Under the Vacancies Act, you would be ineligible to serve as Acting Comptroller beyond July 5, 2022.⁶ If you continue to serve as Acting Comptroller after that date, you expose the agency to legal challenges from regulated entities based on 5 U.S.C. § 3348(d), which states that actions by persons ineligible to serve in an acting capacity “shall have no force or effect.”⁷

Despite that uncertainty, your actions as Acting Comptroller with respect to overhauling the bank merger process have not been limited to abetting a partisan takeover at the FDIC. On May 9, 2022, in a speech at the Brookings Institution, you said regulators are “actively considering” whether banks should be required to make “credible and verifiable commitments to achieving resolvability, tailored to the resolution risks of the resulting bank.”⁸ This decision, and other major actions related to the bank merger process, are properly left for a constitutionally legitimate Comptroller with accountability to Congress.

Contact Nicholle Vo of the Committee’s minority staff at nicholle.vo@mail.house.gov to schedule the transcribed interview requested herein and to make arrangements to produce the records described in the attachment. Thank you for your attention to this important matter.

Sincerely,



Patrick McHenry
Ranking Member



Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and
Financial Institutions



Tom Emmer
Ranking Member
Subcommittee on Oversight
and Investigations

⁶ 5 U.S.C. § 3346(b)(1). “If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate,” then an acting officer may continue to serve for another 210-day period beginning on the date of that rejection, withdrawal, or return. The President’s nominee, Saule Omarova, withdrew her nomination on December 7, 2021.

⁷ See 5 U.S.C. § 3348(d).

⁸ Victoria Guida, *OCC's Hsu: Agencies considering more guardrails for big bank mergers*, POLITICO, May 9, 2022.

cc: The Honorable Maxine Waters, Chairwoman
Committee on Financial Services

ATTACHMENT

Produce the following records in unredacted form as soon as possible, but no later than May 26, 2022. The Committee prefers to receive records electronically to the extent possible.

Schedule of records

1. All documents and communications to or from Michael Hsu referring or relating to the FDIC's bank merger review process, including but not limited to the draft request for information on bank mergers prepared by CFPB staff and/or the vote to request public comment on the issue of bank mergers, since October 1, 2021.
2. All documents and communications between and among Rohit Chopra, Martin Gruenberg, and Michael Hsu referring or relating to the joint statement entitled "Request for Public Comment on the Bank Merger Act" issued on December 9, 2021.
3. All documents and communications between and among Rohit Chopra, CFPB staff, Michael Hsu, and OCC staff referring or relating to the Federal Deposit Insurance Act and/or FDIC Board bylaws since October 1, 2021.
4. All documents and communications referring or relating to the memorandum prepared by CFPB and OCC staffs advising that Board members can act "without the approval of the FDIC chairperson, general counsel or executive secretary," since October 1, 2021.
5. All documents and communications between and among OCC staff and the CFPB Legal Division since October 12, 2021.
6. All documents and communications between and among Rohit Chopra, Martin Gruenberg, and Michael Hsu between October 1, 2021 and December 9, 2021.